IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 6128 OF 1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SURJITSING SHOBHASING KODA

VERSUS

AMC

Appearance:

MR KS ACHARYA for Petitioner

MR HS MUNSHA for Respondent No.1

None present for Respondent No.2

CORAM : MR JUSTICE S.K.KESHOTE

Date of Order : /08/2000

C A V JUDGMENT

#. The petitioner, a retired employee of Ahmedabad Municipal Corporation, by this petition under Article 226 of the Constitution praying for the following reliefs :-

A) That a writ of mandamus and/or appropriate similar writ and/or order may kindly be issued to the respondent to make the payment of his due P.F. amount, with interest at 18%.

B) An appropriate writ and/or direction and/or order may kindly be issued asking the respondent to make payment of P.F. Amount without any deduction and/or the stoppage of P.F. Amount. Therefore, the entire due amount of P.F. with 18% interest be given to the petitioner with all other benefit of retirement including commuted Pension and pension etc.

C) Appropriate writ and / or order and / or direction asking the respondent to pay full pension with interest and commuted pension and retirement benefits.

D) Pending final disposal of this petition respondent be asked to make full payment of retiring benefit including pension, commuted pension, P.F., etc.

F) Any other and further reliefs as deemed just and proper.

#. The facts of the case are that the petitioner has retired from the service on 31.10.1995. The quarter was allotted to the petitioner by the Corporation in the Balbhavan, Opp. Sure Station, Near Police Station, Maninagar, Ahmedabad. The petitioner admits that after retirement he has to vacate the quarter and has to give the possession thereof to the Corporation. The petitioner has made reference to his application dated 7.4.97 under which he intimated to the Corporation that possession of the quarter be taken. After this letter as per the say of the petitioner, the respondents have not taken the possession of the quarter and granted one month time on the request of the occupier of the quarter i.e. the wife of the petitioner to vacate it. For nonvacation of the quarter the retirement benefits of the petitioner were withheld by the Corporation and he has come up before this court by this petition.

#. The reply to the Special Civil Application has been filed by the respondent No.1. Therein it is given out as the quarter is not vacated by the petitioner, his all retiral dues were not given. It has next been stated that for illegally continuing in possession the quarter a huge amount has to be recovered from him towards the occupation charges. It has to be recovered at the market rate and as a result thereof it will go to the tune of thousands of rupees. It has further given out that some benefits of the retirement have been paid to the petitioner, the details of which re given in para 3.2. of the reply. According to this statement Rs.50,818/= were paid to the petitioner towards Gratuity on 4.7.96, Rs.18,904/= was paid to the petitioner towards the Earned Leave. The petitioner's arrears of the pension amounting to Rs.26,910/=, the provident fund amount of Rs.13,000/= approximately as well as the amount of the commutation of pension of Rs.19,936/= are to be paid and for nonpayment thereof the explanation has been furnished by by the Corporation that the petitioner is required to pay rent @Rs.1500/= p.m. for the period he illegally occupied the quarter.

#. From the facts of this case, I find that the husband and wife are not on good terms. Many litigations are going on in between the petitioner and wife viz. maintenance and suit for injunction against the Corporation not to pay him the retiral benefits etc. and suit filed against the petitioner praying therein and Corporation to restrain the Corporation from taking the possession of the quarter from her. The petitioner, in the Special Civil Application in para No.4 admitted that his wife had filed Civil Suit No.4627 of 1995 re payment of retirementary benefits to the petitioner and obtained the stay order, which was ultimately vacated. On the request of the learned counsel for the petitioner, the petitioner's wife is also impleaded as party in this petition but she has not filed any reply to the Special Civil Application. This court has called for R & P of Civil Suit No.2885 of 1997. It is not in dispute that now the possession of the quarter has been taken by the Corporation from the wife of the petitioner.

#. The learned counsel for the petitioner contended that even if it is taken that the quarter has not been vacated by the petitioner within the permissible time after retirement, the corporation has no right whatsoever to withhold the payment of the amount of the retiral benefits of the petitioner. In support of his contention, the learned counsel for the petitioner placed

reliance on two decisions of apex court in the case of Union of India Vs. R.R.Hingorani AIR 1997 SC 808 and in the matter of R.Kapur vs. Director of Inspection (Painting and Publication) Income tax and Another reported in (1994) 6 SCC 589. Carrying on this contention further the learned counsel for the petitioner submits that even if the dues of the rent for retention of the quarter are there, this amount cannot be recovered from the amount of the retiral benefits. For the recovery of the same the respondent-Corporation has either to initiate proceedings under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act or to file civil suit. It has next been contended that the Corporation itself is at fault as its officers have not taken the possession of the quarter though the petitioner has given in writing for taking of the possession thereof. They cannot be allowed to take the benefit of their own wrong, inaction or omission. Lastly it is contended that otherwise also in the facts of this case demand of the rent at market rate for alleged illegal retention of possession of the quarter is wholly arbitrary and unjustified.

#. Shri Munsha learned counsel for the respondent No.1 submitted that it is the developing tendency and particularly in the major cities that the employees of the State Government or employees of the Corporation are not vacating the quarters which are allotted to them even after retirement. In the city of Ahmedabad and Gandhinagar thousands of quarters and bungalows are illegally occupied by the employees / officers of the State Government and Corporation. Shri Munsha submits that in case suit has to be filed for recovery of damages or mesne profit for unauthorised occupation of the quarter beyond the permissible limit by employee / officer after retirement then in almost all the cases, it will be very difficult for the State Government and Corporation to get the possession as well as to get the amount recovered immediately. Shri Munsha in this background submitted that the matter needs to be considered by the court and more free hand is to be given to the Corporation to deal with these problems. He submits that this nonvacation of the quarters / bungalows after the retirement by the employee / officer not only results in deprival of the rent to the Corporation but also the person who is entitled for the allotment thereof is also a sufferer. Shri Munsha states that the employee /officer on retirement will get all the retiral benefits and not a single pie will remain for recovery of the amount of the rent etc. It will be ultimately detrimental to the public interest. Lastly it is

contended that leaving apart the period from 7.4.1997 to the date of vacation of the quarter the petitioner was in possession of the quarter and for this period damages and mesne profit can legitimately be demanded by the Corporation from the petitioner at the market rate. Shri Munsha relying on the very judgment on which reliance has been placed by Shri Acharya i.e. in case of Union of India Vs. R.R.Hingorani (Supra) contended that as the petitioner has retained the quarter illegally beyond the permissible time, for this period amount of damages and mesne profit be granted to the Corporation at market rate.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. It is unfortunate that the corporation has not produced on the record of Special Civil Application any rule or regulation, standing order or circular relating to the allotment of the quarters to its employees and recovery of the rent etc. from them. It is not made clear by the learned counsel for the petitioner upto what period after retirement the employee can legally retain the quarter on payment of normal rent. From the reply to the Special Civil Application it comes out that the corporation permits its employees to retain the quarter for six months after the retirement. It also transpires from the reply to the Special Civil Application that even for this six months period the rent has been calculated @Rs.1500/= p.m. i.e. market rate by the Corporation in this case. From the reply it is an admitted fact that pension of the petitioner will be Rs.1170/= p.m.

#. So, it is admitted fact that the Corporation may permit the employee to retain the possession of the quarter for six months from the date of the retirement. I fail to see any justification in the approach of the respondent-Corporation to charge for this period of six months the damages and mesne profit @Rs.1500/= p.m. i.e. at market rate. In the facts of this case, the Corporation may be justified to charge rent for six months from the petitioner at normal rates. Whether the petitioner occupies or his wife occupies the quarter, it is hardly material and relevant for the Corporation. So long as the wife is not divorced she continues to be a family member of the petitioner and if she occupies the quarter, it is the petitioner's liability to make the payment of the normal charges for six months. There may be disputes and difference in between the husband and wife and they may not be on amicable terms and may be giving separately is hardly of relevance and substance in

this case so far as the liability of the petitioner for payment of damages and mesne profit for the period beyond six months till the quarter is vacated.

##. It is not in dispute that on 7.4.1997 the petitioner has given in writing to the Corporation to take the possession of the quarter from his wife. The officer of the Corporation after receipt of this letter of the petitioner has gone to the site to take the possession of the quarter but on the request of the lady, she has been granted time of one month to vacate the quarter. After that she filed a suit and obtained stay order for the Civil Court.

##. The learned counsel for the respondent-Corporation in para No.3 of the reply to the Special Civil Application stated that the economic rent / market rate is chargeable @Rs.1600/= p.m. Further the property tax is also demanded. In para No.3.2 this economic rent is stated to be Rs.1500/= p.m. and there also the property tax has not been demanded. Be that as it may. What is the correct figure of the rent is a question of fact and there are serious and grave mistakes and errors committed by the officers of the Corporation in mentioning this figure in reply. Either the advocate himself has not gone through the reply before presenting the same in the court or the officer of the Corporation has not read the same. During the course of arguments the learned counsel for the Corporation also vehemently pressed claim for the demand of rent at market rate from the petitioner. I do not find any justification in the claim of the property tax from the petitioner by Corporation It is not a dispute between the tenant and the landlord. The employee of the Corporation, by no stretch of imagination can be taken to be a tenant of the Corporation. He has been allotted the quarter as he is in service of the Corporation. It may not also be a licence in strict terms. It is a permissible possession to the employee of the Corporation and he can retain the same so long he continues in services. This relationship of the employee and the employer is not that of a tenant and landlord. The learned counsel for the respondent No.1 on being put by the court failed to show any provision, act, rule or decision of the Corporation where it is resolved to charge the property tax from the employees of the Corporation for the quarter allotted to them for residence. This demand of the Corporation is wholly arbitrary, unjustified and cannot be accepted. I is the property of the Corporation and not of the employee. A reasonable time has to be provided to the employee to wind up his luggage and articles before he reaches to his

new house or home town after retirement. It is not in dispute that the corporation permits its employees to retain the quarter maximum for 6 months from the date of the retirement. For this period of 6 months the corporation can only charge from the economic rent. So, up to the 30.4.96 the rent would have been charged from the petitioner at the economic rent i.e. what he is paying during the services. From 1.5.96 to 7.4.97 the Corporation may have some justification to demand the damages and mesne profit at the market rent. But in the facts of the case, I do not find any merits in the claim of the Corporation to claim rent or damages or mesne profit from the petitioner for period from 1.5.96 to the date on which quarter has been vacated and possession thereof has been given to the Corporation by the wife of the petitioner at market rent. Looking to the market rent it is certainly very high amount for the petitioner to bear out the burden thereof. It may be more than what the petitioner is getting towards his pension. It is unfortunate case where husband and wife are litigating in the court for their matrimonial / personal disputes. It would have even difficult for the petitioner to throw away her wife from the quarter. This is clear from this conduct of the petitioner ultimately has given in writing to the Corporation to take the possession of the quarter in question. As said earlier, she filed a suit against the Corporation and prayed therein for injunction restraining Corporation from giving any penny of the retiral benefits to the petitioner. It took time in vacation of the interim relief granted in suit aforesaid. After stay has been vacated in the suit of the wife, the petitioner has given in writing to the Corporation to take the possession of the quarter. The Corporation has not taken the possession of the quarter. Meaning thereby they supported the wife. I do not find any justification in the claim of the Corporation for damages and mesne profit at market rate for the period from 1.5.96 to 6.4.96 for this quarter. To this extent the claim of the Corporation cannot be accepted. So far as the period from 7.4.97 to the date on which the quarter is vacated is concerned, looking to the fact that the petitioner was a low paid employee and he retired from the post of Chowkidar and receiving meagre amount of pension the Corporation may consider his case sympathetically and if there is a provision for waiver of this rent then that benefit may be extended to the petitioner. However, in case where such provision is not there then it may consider to charge from the petitioner for this period the rent at the rate at what he was paying during service.

##. The learned counsel for the petitioner very fairly stated that in case this rent is charged at the rate aforesaid the petitioner may not have any objection and this amount be deducted from his balance amount of retiral benefits to be paid to him. The petitioner prayed for giving him interest on the arrears of the retiral benefits. The corporation may consider the feasibility of dropping its demand of rent or damages or mesne profit where the petitioner is willing to forego his interest.

##. The corporation is directed to determine the amount of the retiral benefits of the petitioner to be paid to him as per his eligibility. It is also directed to determine the interest @12% from the date of the retirement till 31.7.2000. The rent for the period from 1.5.96 to date of vacation of the quarter both at market rent as well as on the ordinary rent may also to be determined. If the amount of interest to be paid to the petitioner is more than what he has to pay towards the rent at market rent then there may not be any difficulty to settle the matter. In case where the amount of interest to be paid to the petitioner is less than what the amount of the rent to be paid by the petitioner for the period aforesaid both at the rate of market rent and normal rent then the corporation may consider the matter sympathetically and if amount is not heavy one pass the appropriate order for waiver of the same. Otherwise change the same as per the rate what it held in earlier part of the order. This exercise has to be undertaken and completed within a period of 2 months from the date of the receipt of the writ of this order. So far as the balance amounts of retiral benefits are concerned, the Corporation is directed to pay amount within a period of one month from the date of the determination thereof. So far as the dispute re the interest and the amount of the rent or damages or mesne profit in between the parties liberty is granted to the petitioner for revival of the Special Civil Application in case of difficulty. Rule and Special Civil application stand disposed of accordingly with no order as to costs.

(S.K.Keshote, J.)

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